

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: The Maschhoffs, Inc. Buckeye, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2014-AQ- 01 NO. 2014-WW- 01
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TO: Ken Maschhoff
Chairman of the Board
The Maschhoffs, Inc.
7475 State Route 127,
Carlyle, IL 62231

I. SUMMARY

This administrative consent order (order) is entered into between The Maschhoffs, Inc. (Maschhoffs) and the Iowa Department of Natural Resources (Department) for the purpose of resolving wastewater and air quality violations. For the purpose of settlement, the parties have agreed to the provisions below.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Jeremy Klatt/David Knoll

Iowa Department of Natural Resources
2300 15th St. SW
P.O. Box 1443
Mason City, Iowa 50401
Phone: 641/424-4073

Relating to legal requirements:

Carrie Schoenebaum, Attorney for the
DNR

Iowa Department of Natural Resources
502 E. 9th St Wallace State Office Bldg

Des Moines, Iowa 50319

Phone: 515/281-0824

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules

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promulgated or permits issued pursuant to that part; Iowa Code section 455B.175(1) which authorizes the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10 (455B), which authorize the director to assess administrative penalties.

III. STATEMENT OF FACTS

The parties hereby agree to the following statement of facts.

1. The Maschhoffs corporate headquarters is in Carlyle, Illinois and is one of the largest family-owned pork production networks in North America. The Maschhoffs partner with more than 400 family farmers across the Midwest. These family farmers, known as Production Partners, produce enough pork to feed more than 10 million consumers annually. Maschhoffs operate an animal feed mill at Section 23, T88N, R22W, Hardin County Iowa. This property is locally known as 402 Market Street Buckeye, Iowa. This mill has been leased by Maschhoffs since November 2006 from the Farmers Cooperative Company (FCC). The mill consists of ingredient bins, a roller mill, a boiler, and two pellet coolers that aid in feed preparation. The mill also contains two generators, one of which was previously used as a primary power source. The second generator provides emergency power in the event of a power outage.

Wastewater Violations

2. On September 1, 2011, a National Pollution Discharge Elimination System (NPDES) permit No. 42-00-1-23 was issued to Maschhoffs. This permit authorized the discharge of boiler blowdown wastewater. This wastewater is discharged to an unnamed drainage ditch, which drains to drainage district 11, which drains to the south fork of the Iowa River.

Maschhoffs' NPDES permit contains effluent limits for total suspended solids (TSS), potential Hydrogen (pH), dissolved oxygen (DO), iron, sulfate and temperature. The NPDES permit requires submittal of Monthly Operating Reports (MORs) on the fifteenth day following the close of the reporting period. Maschhoffs' reporting period is every month. This permit also required that the Department be notified in writing within 30 days of commencement of the discharge authorized by the NPDES permit.

3. On September 16, 2011, Maschhoffs notified the Department, in writing, that on September 12, 2011, it commenced its wastewater discharge pursuant to its NPDES permit.

4. On February 21, 2012, Jeremy Klatt, Environmental Specialist with the Department, conducted a compliance inspection. During this inspection Mr. Klatt reviewed the MORs for the previous 4 months. The following violations were noted: (1) DO was only measured once per month rather than the two times required by the permit, (2) DO was

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exceeded during 3 months, (3) iron was exceeded in two months, (4) pH was exceeded during 3 months, (5) temperature was exceeded in three months, (6) composite samples were not taken for iron, sulfate and TSS, (7) a lab certified in Iowa was not being used to analyze iron, sulfate and TSS, (8) the flow of wastewater needed to be measured, and (9) Maschhoffs was reminded of the need to obtain wastewater construction permits prior to installation of any wastewater treatment equipment.

5. On March 19, 2012, the Department sent Maschhoffs a Notice of Violation (NOV) for the violations discussed above. Attached to this NOV was the relevant inspection report. This NOV asked Maschhoffs to provide a written response to the Department within 20 days of receipt of the letter.

6. On April 13, 2012, Shaun Horn called the Department on behalf of Maschhoffs and stated that the company had hired him to address the violations cited in the NOV. The Department asked Mr. Horn to follow-up with a written plan to address the violations.

7. On April 23, 2012, the Department received a letter from Maschhoffs in response to the March 19, 2012, NOV. This letter detailed the action steps Maschhoffs had taken to ensure compliance.

8. On August 2, 2012, following a compliance review of monitoring reports between January and June of 2012, a NOV was sent to Maschhoffs for the following violations: (1) monitoring was not conducted as required for the month of February, (2) there was significant non-compliance of the effluent limits for iron, during the months of May and June, (3) there was also significant non-compliance of TSS during the month of June, and (4) a check valve malfunctioned during the month of June which led to an unintended release of wastewater.

9. On August 30, 2012, the Department sent a letter to Maschhoffs regarding its request to change its outfall location and the newly required antidegradation alternatives analysis. The Department informed Maschhoffs that an explanation must be submitted to the Department explaining why the new preferred antidegradation alternative analysis was not implemented.

10. On October 15, 2012, Seth Wengert an Agronomist at Maschhoffs, sent an e-mail to the Department informing it of the progress it had made at its facility. Equipment had been installed to measure the volume of water discharged from the boiler. The initial data gathered from this equipment indicated that on average 6769 gallons of wastewater per day was being discharged.

11. On October 18, 2012, Maschhoffs sent the Department a letter with an NPDES Permit application form 2 and section 3. This was submitted to satisfy terms of its NPDES permit. Form 2 and sections 3 were incomplete.

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12. On September 17, 2012, Mr. Klatt conducted a follow-up compliance inspection. Mr. Klatt documented the following violations. During the month of July, TSS and pH were violated. During the month of August, pH, TSS and temperature were violated. Further, an aeration system had been installed without a wastewater construction permit. This inspection report required that Maschhoffs develop a protocol which meets the special conditions contained in the permit, and that Maschhoffs comply with all effluent limits and monitoring requirements and obtain the necessary construction permits for the installation of wastewater treatment equipment.

13. On October 22, 2012, the Department sent Maschhoffs a NOV and a copy of the September 17, 2012, inspection report for the above discussed violations. This NOV asked that Maschhoffs submit a written response to the Department explaining the measures it will take to come into compliance. The Department asked that this be submitted within 20 days of receipt of the NOV.

14. On November 9, 2012, Maschhoffs submitted a letter pursuant to the above request. This response detailed the corrective measures that will be implemented by Maschhoffs to eliminate the violations.

15. On December 21, 2012, Maschhoffs submitted additional monitoring results which were required, within six months of the commencement of discharge, by its NPDES permit. The Department had reminded Maschhoffs of this requirement during the February and September 2012 inspections.

16. On January 15, 2013, the Department sent Maschhoffs a NOV for violations of the effluent limitations contained in its NPDES permit. A review of Maschhoffs MORs from July 2012 through December 2012 showed that limits for iron, TSS, temperature and pH had been exceeded.

17. A review of Maschhoffs MORs for January 2013 through June 2013 showed that limits for iron, TSS, temperature and pH had been exceeded on numerous occasions.

18. On July 31, 2013, a NOV was sent for the above discussed violations.

19. On August 30, 2013, Mr. Klatt conducted a follow-up compliance inspection. During this inspection Mr. Klatt documented the following violations: (1) pH limit was exceeded in July, (2) pH was exceeded when tested during the inspection, (3) DO was exceeded when tested during the inspection, (3) pH and DO were not properly reported in the MORs. Maschhoffs had been measuring pH and DO several times per month but only reporting the minimum required by its NPDES permit. The NPDES permit requires that all measurements of a permitted parameter taken at the outfall location be reported on the MOR.

20. On September 18, 2013, the Department sent Maschhoffs a NOV for the above discussed violations and a copy of the relevant inspection report.

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Air Quality Permitting Violations

21. On June 30, 2010, Trent Lambert, of the Department, conducted an air quality compliance inspection of Maschhoffs. During this inspection Mr. Lambert determined that a backup generator had been installed by Maschhoffs without a construction permit. He also noted that a roller mill and boiler needed the Department's determination as to whether construction permits were required.

22. On July 8, 2010, a NOV was sent to Maschhoffs for the above discussed violation. This NOV informed Maschhoffs that an air quality construction permit was required for new, altered or modified equipment or control equipment, which emits pollutants to the atmosphere. Attached to this NOV was a copy of the June 30, 2010, inspection report.

23. On July 23, 2010, Maschhoffs sent the Department a letter in response to the June 30, 2010 NOV. This letter informed the Department that Maschhoffs submitted an as-built air quality construction permit to the Department for its backup generator, new boiler and a construction permit for the second (primary) generator which it planned to install.

24. On November 8, 2010, air quality construction permits were issued for the above discussed emission points.

25. During the month of August 2011, prior to obtaining an air quality construction permit, Maschhoffs installed a bag filter for the various ingredient bins which vent to the atmosphere.

26. On December 6, 2011, the Department received a complaint alleging that "grain dust" from Maschhoffs feed mill in Buckeye, Iowa was dispersed all over the town. The complainant alleged that this dust had in fact turned the snow in town yellow.

27. On December 8, 2011, Scott Wilson, an Environmental Specialist Senior with the Department, went to the site to investigate the complaint. Once on site, Mr. Wilson observed fugitive dust on several properties in the vicinity of the Maschhoffs' property. At the time of his inspection there was no snow on the ground. Mr. Wilson took pictures which documented fugitive dust violations. Then, Mr. Wilson spoke to Mark Krautbauer of Maschhoffs who acknowledged that "the cyclone had plugged which caused grain dust to leave the feed mill property." Mr. Krautbauer informed Mr. Wilson that Maschhoffs leases the facility from FCC who handles the incoming grain and Maschhoffs process the feed. Mr. Krautbauer acknowledged that the cyclone had been plugged within the last week which caused a fugitive dust release. He summarized the steps that Maschhoffs had taken to correct the problem. Maschhoffs believed that the problem was caused by a leaking steam valve inside the pellet mill. The extra steam was entering the cyclone and causing dust to collect on the cool, wet side of the cyclone, causing it to plug. The unit had been installed in February and this was the first full winter of operation. A new steam valve had been ordered and would be installed. Maschhoffs had also hired a contractor (North Central Millwrights) to physically enter and clean the cyclone on December 7, 2011. Mr. Wilson discussed the

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fugitive dust rules with Mr. Krautbauer who agreed to keep the Department informed of the progress Maschhoffs makes in abating the violations.

28. After Mr. Wilson's December 8, 2011, investigation the Maschhoffs took steps to ensure that fugitive dust was not released. Maschhoffs installed a bin sensor which triggers an alarm if the airflow through the cyclone decreases, and Maschhoffs used a vacuum truck to clean-up the accumulated grain dust in the impacted area.

29. On January 6, 2012, the Department received a complaint alleging Maschhoffs was again causing fugitive dust violations. On the same day, Mr. Wilson went to the site to investigate the complaint. Once on site, Mr. Wilson did not observe fugitive dust in the air. Mr. Wilson and Mr. Krautbauer drove around town and during this drive, they did observe a significant accumulation of dust deposited throughout town which had been emitted by the Maschhoffs' cyclone. The accumulation of dust was significant along Main Street between the fire station and the City Hall. Mr. Krautbauer stated that the cyclone had plugged again and agreed to hire a vacuum truck to clean the impacted areas as soon as possible.

30. On February 27, 2012, the Department sent a NOV to Maschhoffs for the above discussed violations.

31. On June 28, 2012, Mr. Wilson conducted a follow-up fugitive dust inspection. During this inspection, he did not observe any fugitive dust at Maschhoffs or throughout town.

32. On February 1, 2013, David Knoll and Glenn Carper, Environmental Specialists with the Department, conducted an air quality compliance inspection of Maschhoffs. During this inspection the following violations were noted: (1) two pellet coolers had been installed but an air quality construction permit had only been obtained for one of the units (Pellet Cooler #1); (2) a baghouse which vents the ingredient bins was installed in 2011, however, no construction permit had been obtained; (3) construction permits obtained for the Emergency CI Engine emission point (EP3) had the incorrect model year and manufacture date; (4) the maintenance requirements for EP3 were deficient; and (5) the record keeping requirements for EP3 were deficient.

33. On February 12, 2013, a NOV was sent to Maschhoffs for the above discussed violations. This NOV included a copy of the inspection report which noted the specific violations.

34. In response to the above referenced NOV, Maschhoffs sent the Department a letter dated March 4, 2013. In this letter, Maschhoffs stated that it retained the services of Conestoga-Rovers & Associates (CRA) to assist in obtaining compliance with the air quality permit requirements.

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IV. CONCLUSIONS OF LAW

The parties agree that the following conclusions of law are applicable to this matter:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit. The above stated facts demonstrate noncompliance with this provision.
2. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of waste disposal systems. The Commission has done so at 567 IAC chapters 60-64. Subrule 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit. Subrule 64.7 specifies the conditions that are to be included in a permit, including applicable effluent limitations in chapters 61 and 62 of the rules. Maschhoffs failed to comply with monitoring requirements and effluent limits contained in its permit. Therefore, the above stated facts demonstrate noncompliance with these provisions.
3. 567 IAC 64.2(1) states that "[n]o person shall construct, install or modify any wastewater disposal system or part thereof or extension or addition thereto without, or contrary to any condition of, a construction permit issued by the director." Maschhoffs installed an aeration system without a wastewater construction permit. Therefore, the above stated facts demonstrate noncompliance with this provision.
4. Iowa Code section 455B.133 provides for the Commission to establish rules governing the quality of air and emission standards. Pursuant to that provision the Commission established 567 I.A.C. 23.3(2)(c)(1), which states in part, that persons, shall take reasonable precautions to prevent the discharge of visible emissions of fugitive dust beyond the lot line of the property on which the emissions originate. The rule gives examples of reasonable precautions. Maschhoffs allowed visible emission of fugitive dust beyond the lot line on numerous occasions. Therefore, the above stated facts demonstrate noncompliance with this provision.
5. 567 IAC 22.1 (1) requires that air quality construction permits be obtained prior to the construction, installation, reconstruction or alteration of equipment or control equipment. Numerous emission points have been installed prior to receiving an air quality construction permit. Since 2009, at least 5 emission points have been installed without the required construction permits. These emission points include the following: an emergency generator, a roller mill, a boiler, ingredient bin for a bag filter, and a new pellet cooler. Therefore, the above stated facts show noncompliance with this provision.
6. 567 IAC 22.3(3) states that a permit may be issued subject to conditions which shall be specified in writing. Such conditions may include but are not limited to, emission limits, operating conditions, fuel specifications, compliance testing, continuous monitoring, and excess emission reporting. Maschhoffs failed to comply with the maintenance requirements and record keeping requirements for EP3. Therefore, the above stated facts show noncompliance with this provision.

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V. ORDER

THEREFORE, the Department orders and Maschhoffs agrees to comply with the following provisions regarding the Feed Mill located in Buckeye Iowa in order to cease, abate, and redress the above-cited violations:

1. Maschhoffs shall comply with all terms of its NPDES permit;
2. In the future, Maschhoffs shall obtain wastewater construction permits prior to the installation of any wastewater treatment equipment;
3. Maschhoffs shall submit to the Department the information required to obtain as-built air quality construction permits for the pellet cooler and ingredient bin bag filter no later than 30 days after the issuance of this order;
4. In the future, Maschhoffs shall timely obtain all necessary air quality construction permits; and
5. Take action necessary to prevent fugitive dust emissions in accordance with 567 Iowa Administrative Code (IAC) 23.3(2)(c);
6. Maschhoffs shall pay a penalty in the amount of \$10,000.00 within 30 days of the date the Director signs this order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the water quality violation involved in this matter. And Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this order is \$10,000.00. The administrative penalty is determined as follows:

Economic Benefit—Maschhoffs saved time and money by not complying with various Iowa environmental regulations. Specifically, an economic benefit was likely obtained by beginning operation of a process line prior to obtaining the required air quality construction

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permit. Further, Maschhoffs consistently violated the effluent limits contained in its NPDES permit since the commencement of discharge from its boiler in September 2011. Thus, Maschhoffs have saved money by not allocating the necessary time to determine why the effluent limits were violated and by not allocating the necessary time to abate the violations. An economic benefit was also obtained through delayed costs in paying engineers and in continuing to operate despite knowingly violating its permit limits. For these reasons, \$3,000.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Maschhoffs have consistently failed to comply with the effluent limits contained in its NPDES permit. Effluent limits are the core of an NPDES permit and the backbone of the wastewater regulatory program. The limits contained in the permit have been established to ensure that environmental degradation will not occur. The failure by Maschhoffs to comply with its NPDES limits has resulted in a release of pollutants into waters of the state.

Maschhoffs also failed to comply with air quality construction permit requirements and air quality regulations. This threatens the integrity of the air quality program. Air quality construction permits are required to be obtained prior to construction in order to allow for the prior review of plans and specifications pertaining to a proposed contaminant source. Maschhoffs failed to obtain such permits on numerous occasions. In addition, fugitive dust was airborne in sufficient quantities to cause a nuisance to the residents of Buckeye, Iowa.

For these reasons, \$2,000.00 is assessed for the wastewater violations and \$2,000.00 is assessed for the air quality violations for a total of \$4,000.00 being assessed for this factor.

Culpability In determining culpability, the standard of care required by the laws of the state of Iowa should be considered. In so doing, the degree of intent or negligence should be considered. The Department asserts that Maschhoffs' actions were negligent rather than intentional. Generally negligence is defined as "the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation." *Black's Law Dictionary*, 470 (2nd Pocket Edition, 2001). The violations involved in this order are violations of conditions of the Iowa Code, Iowa Administrative Code and permits issued by the Department. A reasonable person should be aware of the laws which govern their business. Further, Maschhoffs was issued an NPDES permit which it did not appeal. This permit detailed the requirements to obtain compliance. The issuance of this permit is deemed constructive knowledge of those conditions. In addition, Maschhoffs failed to comply with numerous permitting requirements in two different program areas, water quality and air quality. Violations persisted in both programs subsequent to notification from the Department that it was in noncompliance. Therefore, \$3,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

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This order is entered into knowingly by and with the consent of Maschhoffs. For that reason, Maschhoffs waives its right to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this order constitutes full satisfaction of all requirements pertaining to the violations described in order. Failure to comply with this order may result in the imposition of additional administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.191.


Chuck Gipp, DIRECTOR
Iowa Department of Natural Resources

Dated this 6th day of
January, ~~2013~~
2014


On behalf of The Maschhoffs, Inc.

Dated this 18th day of
DECEMBER, 2013

The Maschhoffs, Inc. Wastewater NPDES permit No. 42-00-1-23; Carrie Schoenebaum; Bryan Bunton; DNR Field Office 2; EPA; I.A.1, I.B.2.c., VII.A.1 and VII.B.2.a.